August 28, 2012

Honorable Members of the Texas Legislature,

You may have seen recent Dallas Morning News articles accusing TDI of rolling back consumer protections in managed care plans by suspending a rule that had not gone into effect. Nothing could be further from the truth. The purpose of this letter is to provide you with important, relevant facts omitted by the Dallas Morning News. More importantly, by focusing on an administrative rule-making process and criticizing TDI for seeking a balanced, coordinated approach to an ongoing, long-standing and bitter contracting dispute between health care providers and insurers over out-of-network charges, or "balance billing," the Dallas Morning News missed an excellent opportunity to address the bigger issue. As framed by Andrea Hanson, a consumer quoted in one of the articles: "[f]euding doctors and insurers exploit consumers."

As you know, this quarrel dates back to the inception of managed care when insurers established provider networks to control health care costs. After many years of disagreement between providers and insurers, the Legislature directed TDI to convene an advisory committee to study these issues in 2007. TDI's 67-page report, issued in January 2009, made no unified recommendations due to a complete lack of consensus among the parties. Rather, the report contained three appendices, one each from the Texas Medical Association, Texas Hospital Association and Texas Association of Health Plans, that provided each group's unique (and generally conflicting) perspective with separate recommendations.

Legislative and Regulatory History

In 2009, HB 2256 created a mediation process designed to assist and protect consumers in the event of a balance billing dispute between medical providers and health plans. (As TDI has received requests for fewer than 50 mediations, all of which have been resolved prior to actual mediation, I think the process is working well.) HB 2256 also directed TDI to adopt network adequacy rules, with little guidance as to the approach to the issue.

In 2010, TDI began working on the rule and met with interested parties, both individually and in public stakeholder meetings. TDI received written comments and oral testimony at a public hearing on February 8, 2011.

On May 19, 2011, former Commissioner Mike Geeslin issued Order No. 11-0430, amending rules regarding preferred provider benefit plans and network adequacy requirements, to be effective May 19, 2012. Although I am not privy to Commissioner Geeslin's thought process, it is my understanding from staff who worked on the rule with my predecessor that the delayed implementation period reflected a concern that the rule could be rendered obsolete as a result of pending legislation regarding exclusive provider benefit plans and collaboratives, as well as recently enacted federal healthcare legislation.

I became Commissioner on August 15, 2011. Shortly thereafter, staff advised that TDI needed to initiate rule-making for exclusive provider benefit plans and that such a rule could have implications for the previously adopted but not yet implemented preferred provider rule. On December 28, 2011, after lengthy and thoughtful discussions with staff, Bulletin B-0050-11 was

issued suspending implementation of the preferred provider rule in order to develop a single rule addressing both preferred provider and exclusive provider benefit plans.

On February 7, 2012, an informal draft of a new rule was issued, and a stakeholder meeting was held on February 23, 2012. A proposed rule was issued on June 18, 2012, and a public hearing was held on July 17, 2012. TDI has been very proactive in seeking input from stakeholders and interested parties – in meetings, in writing and in the public hearing.

I have not yet finalized the new rule. The process for doing so is long, but necessary to allow all parties time to fairly participate and to ensure a thorough, thoughtful and meaningful result. Even so, when you examine the proposed rule, it not only maintains, but enhances the consumer's ability to understand and navigate networks. The department proposed eliminating very few of the new network adequacy reporting requirements, which were determined to be duplicative of other reporting requirements and potentially confusing. These changes would not in any way reduce a consumer's ability to assess the adequacy of networks.

Finally, as I previously mentioned, but the Dallas Morning News did not, the Legislature put in place a very effective mediation process to protect consumers from excessive charges as a result of balance billing disputes between medical providers and insurers. The law requires providers to notify consumers of their right to mediation on each billing statement. I believe mediation is much more helpful to consumers than asking them to research and piece together a complex array of data points across websites, provider directories, and plan documents necessary to make a truly informed decision, as the suspended rule would have required.

Additional legislation may be needed to ensure and facilitate adequacy in health care networks. I look forward to working with you to find an effective solution that protects consumers and removes TDI from the middle of what, thus far, has been an intractable problem that cannot be solved by the parties.

Very Truly Yours,

Eleanor Kitzman
Commissioner of Insurance